IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 51 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

BHARAT VIJAY MILLS LTD

Appearance:

MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 04/09/2000

ORAL JUDGEMENT (Per A.R.Dave, J)

At the instance of the Revenue, the following two

questions of law have been referred to this Court for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

"1. Whether, the Appellate Tribunal has not erred in law and on facts in coming to the opinion that the Commissioner (Appeals) was justified in adopting the perquisite regarding the motor car expenses at Rs.3600/in the case of each of the Managing Directors as claimed by the assessee?

2. Whether, the Appellate Tribunal has not erred in law and on facts in deleting the amount of Rs.60,000/- being deferred annuity premium paid in respect of two Managing Directors of the Company which was treated as capital expenditure by the Income-tax Officer?"

2. We have heard Learned Advocate Mrs.Bhatt for the Revenue. Nobody appears for the assessee.

3. So far as question no.1 is concerned, it pertains to disallowance of perquisite regarding motor car expenses. The said perquisite was given to the Managing Director. The Income Tax Officer after considering the facts of the case arrived at a conclusion that 25% of the amount spent by the assessee company should be treated as a perquisite on account of usage of the company's car. Being aggrieved by the said order, the Department had gone into appeal before the C.I.T. (Appeals). The C.I.T. (Appeals) dismissed the appeal so far as the question with regard to calculation of the said perquisite was concerned. In an appeal before the Tribunal, the Tribunal held that the claim made by the Assessee before I.T.O. was justified and ordered accordingly.

4. We have heard the Learned Advocate and have perused the relevant orders. It appears that the Tribunal had exercised its discretion with regard to calculation of perquisite only after considering the facts of the case. The Tribunal had considered the fact that the premises of the company was approximately 30 kms. away from the city of Ahmedabad where the Directors were residing and looking to the facts of the case, the Tribunal ordered that Rs.3600/- in case of each Managing Director should be treated as perquisite.

5. In view of the said fact, we are of the opinion that the conclusion arrived at by the Tribunal should not be interfered with. In the circumstances, we decide question no.1 referred to us in favour of the assessee and against the Revenue.

6. So far as the 2nd question is concerned, it has been squarely covered by the judgement delivered in the case of Gujarat Steel Tubes Ltd. Vs. Commissioner of Income Tax, 210 ITR 358. It has been held in the said case that premium paid by an assessee company in respect of purchase of deferred annuity on the lives of the directors cannot be allowed as revenue expenditure. We are in respectful agreement with the said judgement and therefore we decide question no.2 in favour of the revenue and against the assessee.

7. In the circumstances, the reference stands disposed of by answering question no.1 in favour of the assessee and against the Revenue and so far as question no.2 is concerned, by answering it in favour of the Revenue and against the assessee. There shall be no order as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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